IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 96 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

INDRESHWAR MAJOOR SAHAKARI MANDALI LTD.

Versus

TALUKA PANCHAYAT

Appearance:

MR JAYANT PATEL for Petitioner

MR HS MUNSHAW for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/01/2001

ORAL JUDGEMENT

1. The Revisioner filed Regular Civil Suit no. 30/2000 in the Court of Civil Judge, (Junior Division), at Kutiyana for injunction against present respondents seeking indulgence of the Court injuncting the respondent from giving work of road construction to the Gram Panchayat, Dhruwala, without inviting tenders.

Therefore, learned Civil Judge after considering the rival side contentions allowed application Exh.5 for temporary injunction and directed the defendant (present opponent) not to proceed with the work without inviting tenders and without giving opportunity to Labour Co-operative Societies till final disposal of the suit. This order was challenged by the present respondent in the Court of Assistant Judge at Porbandar. The appeal was numbered as Civil Miscellaneous Appeal No. 34/2000. The learned Assistant Judge after considering the rival cases allowed the appeal and set aside the order passed by Civil Judge, (Junior Division) Kutiyana, below Exh. 5 in Regular Civil Suit No.32/2000. Aggrieved by this judgement and order present Revision Application is preferred by the original plaintiff.

2. A tender notice came to be issued on 06.07.2000 bearing no. 200/2001/7/200 for a road to be constructed at Dhruwala village, besides several other work. That tender notice was challenged by present Revisioner by preferring Civil Suit No. 30/2000. In that matter a compromise was arrived at (Annexure -D). According to that compromise it was decided and agreed between the parties that the said tender would stand cancelled and defendant agreed to issue new tender. It was also agreed that on issuance of new tender the plaintiff (present Revisioner) would also be afforded opportunity to compete. This compromise was entered into on August 5, 2000.

2.1. Subsequently, on 07.08.2000 a letter was addressed by Taluka Development Officer, Kutiyana to Surpanch Gram Panchayat Dhruwala inquiring about the willingness or otherwise of the Gram Panchayat to undertake the construction of C.C. Road, valued approximately at Rs.49,750/-. The expenditure was to be met out of M.P's fund. The Revisioner having come to know about this communication challenges this action by preferring Regular Civil Suit No.32/2000. The main ground of challenge is that respondent Taluka Panchayat being a public body and representative of the Government is required to follow fair procedure and afford equal opportunity to all. By writing letter dt. August 7, 2000 (Annexure E) it has acted in an arbitrary manner, and has tried to do a favour to the Panchayat against the interest of the plaintiff and thereby has discriminated the plaintiff society against Gram Panchayat. It has also been contended that this action is contrary to the compromise entered into between the parties.

2.2. Against this, the contention on behalf of the

defendant/respondent is that a policy was carved out in 1991 by the Government whereby an attempt was made to train condition and strengthen the working of local bodies . Defendant was following that policy. It is required to firstly inquire from the Panchayat whether it is ready to carry out the work departmentally. If Panchayat says no, then only tender notice is required to be issued. As such, there is no discrimination. The plaintiff cannot impose itself or thrust itself on the defendant if the defendant wants to carry out the work independently.

3. The Trial Court was impressed by the arguments advanced by the plaintiff, particularly the compromise arrived at between the parties and accepted the case of the plaintiff by granting injunction. The Trial Court was also mindful about the fact that the work may not suffer and therefore directed that work may be carried out after affording opportunity to the plaintiff.

3.1. The appellate Court took a different view of the matter and held that a circular issued in 1991 is being followed by the defendant. The learned Assistant Judge also examined the Government circular in question and interpreted the same and came to the conclusion that injunction ought not to have been granted. He therefore allowed the appeal and set aside the order in question. It is this order that is the subject matter of challenge in this Revision Application.

4. Before proceeding with the merits of the matter it would be appropriate to note that this is a Revision Application under Section 115 of the Civil Procedure Code where the scope of jurisdiction is limited to examine if any jurisdictional error is committed by the Court below while passing the impugned order.

5. Mr.Jayant Patel, learned Advocate appearing for the Revisioner submitted that discriminatory treatment was tried to be given by the opponent in face of the compromise entered into in the earlier suit. The same work is admitted to be given by private negotiations with reflects lack of transparency on the part of the defendant. Mr.Jayant Patel, submitted that the resolution of the Government is wrongly interpreted by the Court below and once it is agreed that the earlier tender is cancelled a new tender is to be invited. It is improper on the part of the public body like Taluka Panchayat to start private negotiations for the same work. He therefore urged that this matter may be

admitted. In order to satisfy the Court that a jurisdictional error is committed by the Court below, he has drawn the attention of this Court to an observation made by learned Assistant Judge in his judgement that there is nothing to indicate that a work is to be funded out of M.P's fund. In order to indicate that this is an erroneous observation he has drawn attention of this Court to the communication in question (Annexure -E) wherein it is been categorically stated that the project is to be funded out of M.P's fund in the year 1999-2000. He therefore submitted that this is a jurisdictional error committed by the Court below and the Revision Application may be entertained.

6. Mr.H.S. Munshaw, learned advocate appearing for the respondent on caveat submitted that the policy of the Government is required to be followed. Whatever work is to be done it is to be done, in accordance with circular issued by the Government on 24th September, 1991 which requires that firstly Gram Panchayat is to be afforded an opportunity of undertaking its work departmentally and if it expresses its inability to do so, then tender is to be invited. After the compromise opponent has started this procedure when the present suit came to be filed and injunction was granted. Without following this procedure opponent could have straight away issued a tender notice therefore there is no substance in the allegation regarding arbitrary exercise of powers by the defendant Authority.

7. Having regard to Rival side contentions it requires to be noted that there is no dispute regarding issuance of circular bearing No. PRS 1089/104/90/J dt. September 24, 1991 and the same is being operative as on today. By that circular it is provided that work of Gram Panchayat and Nagar Panchayat up to Rs.50,000/- were being handed over to Gram Panchayat and Nagar Panchayat by virtue of earlier provisions. It was to be found ineffective and lack of harmony was also found and therefore after considering the requirements it was decided that the work of Gram Panchayat up to Rs.50,000/- can be given to Panchayat. After considering the requirements it was decided that the work after obtaining their consent is to be carried out departmentally subject to certain conditions narrated in this circular. If at all Panchayat expressed its inability to do so, then tender is to be invited. In such eventuality later on if the contractor express his inability to work there then also the work is not to be given to the Gram Panchayat.

8. Mr.Patel's contentions is that this circular no

doubt is operative but it is required to be made applicable in the present case, in light of the compromise arrived a between the parties. For that purpose the compromise arrived at between the parties earlier is required to be seen. (Annexure D) It was agreed that the tender there in question was to be cancelled and new tender was required to be invited and in such new invitation the Revisioner was to be afforded an opportunity. Mr.Patel's contention is that now therefore the defendant/respondent could not have negotiated with the private property by writing letter (Annexure E).

9. It is not possible to accept the contention raised by Mr.Patel for the reason that when the earlier tender is cancelled and that work is to be done again and tender is to be invited as agreed, the Authority concerned is required to follow the procedure as stated in circular of 1991. This communication Annexure E only inquires from the Gram Panchayat as to its willingness to carry out the work of construction of C.C. road. It is also clear form the communication that is also called upon to furnish requisite information as contemplated under the circular of 1991. It is therefore not possible to accept the contention of Mr.Patel that the respondent is required to be injuncted from undertaking the work of construction of road. A statement is made at the bar by Mr.Munshaw, that communication Annexure E is only a step that is required to be followed by virtue of circular of 1991 and it is not an attempt of giving work to the Gram Panchayat by private negotiation. This makes it clear that there is no arbitrary action on part of Defendant nor it can be said to be discriminatory. Public Officers are required to follow procedure in order to have uniform and harmonious functioning. For this purpose rules are framed, circulars are issued and Resolutions are passed. The Officers governed by them are expected to follow them & if that is not done chances of arbitrary action are increased. Where therefore, in compromise it was stated that when in future tender are invited plaintiff would be afforded opportunity, it is supposed to mean that the tender to be invited in future are to be invited after following due procedure and not by circumventing the same.

10. As regards the observation by the Appellate Court about there being nothing to indicate that the work is to be funded out of M.P's fund, it seems that Annexure E is probably not closely scrutinised. However, this error by itself will not subject the order impugned to disturbance in exercise of revisional jurisdiction. In fact no

jurisdictional error is indicated by revisioner which may otherwise call for interference in exercise of power under Section 115 of Civil Procedure Code.

11. Under the circumstances this Court finds no merit for entertaining this Revision Application and the same is dismissed. No costs.

(A.L. DAVE,J.)

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